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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 MACNEIL AUTOMOTIVE
12 PRODUCTS LIMITED, an Illinois
13 corporation, d/b/a WEATHERTECH,
14 and MACNEIL IP LLC, an Illinois
15 company,

16 Plaintiffs,

17 v.

18 JINRONG (SH) AUTOMOTIVE
19 ACCESSORY DEVELOPMENT CO.
20 LTD., a Chinese company, and RUI
21 DAI, a Chinese company and/or
22 individual,

23 Defendants.

CASE NO. 2:20-cv-00856-TSZ

**STIPULATED
PROTECTIVE ORDER**

24 1. PURPOSES AND LIMITATIONS

25 Discovery in this action is likely to involve production of confidential, proprietary, or
26 private information for which special protection may be warranted. Accordingly, the parties hereby
stipulate to and petition the court to enter the following Stipulated Protective Order. The parties
acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket
protection on all disclosures or responses to discovery, the protection it affords from public
disclosure and use extends only to the limited information or items that are entitled to confidential

1 treatment under the applicable legal principles, and it does not presumptively entitle parties to file
2 confidential information under seal.

3 2. “CONFIDENTIAL” MATERIAL

4 2.1 “Confidential” material shall include the following documents and tangible things
5 produced or otherwise exchanged: (1) information concerning marketing plans, business plans,
6 forecasts, and business strategies and (2) other proprietary documents that would cause harm to a
7 party if publicly disclosed.

8 2.2 “Outside Counsel Attorneys Eyes Only” material shall include documents and
9 tangible things produced or otherwise exchanged that (1) would otherwise be designated as
10 confidential and (2) are reasonably believed by the designating party to represent a trade secret or
11 other confidential commercial information of such sensitive nature that its dissemination cannot
12 adequately be covered by the protections set forth for confidential materials. For example,
13 financial and tax documents, molding, design, or other creation information would be considered
14 Outside Counsel Attorneys’ Eyes Only.

15 3. SCOPE

16 The protections conferred by this agreement cover not only Confidential or Outside
17 Counsel Attorneys’ Eyes Only material (as defined above), but also (1) any information copied or
18 extracted from Confidential or Outside Counsel Attorneys’ Eyes Only material; (2) all copies,
19 excerpts, summaries, or compilations of Confidential or Outside Counsel Attorneys’ Eyes Only
20 material; and (3) any testimony, conversations, or presentations by parties or their counsel that
21 might reveal Confidential or Outside Counsel Attorneys’ Eyes Only material.

22 However, the protections conferred by this agreement do not cover information that is in
23 the public domain or becomes part of the public domain through trial or otherwise.

24 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

25 4.1 Basic Principles. A receiving party may use Confidential or Outside Counsel
26 Attorneys’ Eyes Only material that is disclosed or produced by another party or by a non-party in

1 connection with this case only for prosecuting, defending, or attempting to settle this litigation.
2 Confidential or Outside Counsel Attorneys' Eyes Only material may be disclosed only to the
3 categories of persons and under the conditions described in this agreement. Confidential or Outside
4 Counsel Attorneys' Eyes Only material must be stored and maintained by a receiving party at a
5 location and in a secure manner that ensures that access is limited to the persons authorized under
6 this agreement.

7 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
8 by the court or permitted in writing by the designating party, a receiving party may disclose any
9 confidential material only to:

10 (a) the receiving party's counsel in this action, as well as employees of counsel
11 to whom it is reasonably necessary to disclose the information for this litigation;

12 (b) the officers, directors, and employees (including in house counsel) of the
13 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
14 agree that a particular document or material produced is for Attorney's Eyes Only and is so
15 designated;

16 (c) experts and consultants to whom disclosure is reasonably necessary for this
17 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

18 (d) the court, court personnel, and court reporters and their staff;

19 (e) copy or imaging services retained by counsel to assist in the duplication of
20 confidential material, provided that counsel for the party retaining the copy or imaging service
21 instructs the service not to disclose any confidential material to third parties and to immediately
22 return all originals and copies of any confidential material;

23 (f) during their depositions, witnesses in the action to whom disclosure is
24 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
25 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
26 transcribed deposition testimony or exhibits to depositions that reveal confidential material must

1 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
2 under this agreement;

3 (g) the author or recipient of a document containing the information or a
4 custodian or other person who otherwise possessed or knew the information.

5 4.3 Disclosure of "OUTSIDE COUNSEL ATTORNEYS' EYES ONLY" Information
6 or Items. Unless otherwise ordered by the court or permitted in writing by the designating party,
7 Outside Counsel Attorneys' Eyes Only material will be disclosed to a party's outside counsel,
8 rather than to the party itself, and counsel may disclose any such material only to:

9 (a) the receiving party's outside counsel in this action, as well as employees of
10 counsel to whom it is reasonably necessary to disclose the information for this litigation;

11 (b) experts and consultants to whom disclosure is reasonably necessary for this
12 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

13 (c) the court, court personnel, and court reporters and their staff;

14 (d) copy or imaging services retained by counsel to assist in the duplication of
15 Confidential or Outside Counsel Attorneys' Eyes Only material, provided that counsel for the party
16 retaining the copy or imaging service instructs the service not to disclose any Confidential or
17 Outside Counsel Attorneys' Eyes Only material to third parties and to immediately return all
18 originals and copies of any Confidential or Outside Counsel Attorneys' Eyes Only material;

19 (e) during their depositions, witnesses in the action to whom disclosure is
20 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
21 (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal
22 Confidential or Outside Counsel Attorneys' Eyes Only material must be separately bound by the
23 court reporter and may not be disclosed to anyone except as permitted under this agreement;

24 (f) the author or recipient of a document containing the information or a
25 custodian or other person who otherwise possessed or knew the information.
26

1 4.4 Filing Confidential Material. Before filing Confidential or Outside Counsel
2 Attorneys' Eyes Only material or discussing or referencing such material in court filings, the filing
3 party shall confer with the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to
4 determine whether the designating party will remove the Confidential or Outside Counsel
5 Attorneys' Eyes Only designation, whether the document can be redacted, or whether a motion to
6 seal or stipulation and proposed order is warranted. During the meet and confer process, the
7 designating party must identify the basis for sealing the specific Confidential or Outside Counsel
8 Attorneys' Eyes Only information at issue, and the filing party shall include this basis in its motion
9 to seal, along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets
10 forth the procedures that must be followed and the standards that will be applied when a party
11 seeks permission from the court to file material under seal. A party who seeks to maintain the
12 confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B),
13 even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result in
14 the motion to seal being denied, in accordance with the strong presumption of public access to the
15 Court's files.

16 5. DESIGNATING PROTECTED MATERIAL

17 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
18 or non-party that designates information or items for protection under this agreement must take
19 care to limit any such designation to specific material that qualifies under the appropriate
20 standards. The designating party must designate for protection only those parts of material,
21 documents, items, or oral or written communications that qualify, so that other portions of the
22 material, documents, items, or communications for which protection is not warranted are not swept
23 unjustifiably within the ambit of this agreement.

24 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
25 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
26

unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party to sanctions.

If it comes to a designating party's attention that information or items that it designated for protection do not qualify for protection, the designating party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement (see, *e.g.*, section 5.2(b) below), or as otherwise stipulated or ordered, disclosure or discovery material that qualifies for protection under this agreement must be clearly so designated before or when the material is disclosed or produced.

(a) Information in documentary form: (*e.g.*, paper or electronic documents and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings), the designating party must affix the word "CONFIDENTIAL" OR "OUTSIDE COUNSEL ATTORNEYS' EYES ONLY," as appropriate, to each page that contains confidential material. If only a portion or portions of the material on a page qualifies for protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the margins).

(b) Testimony given in deposition or in other pretrial proceedings: the parties and any participating non-parties must identify on the record, during the deposition or other pretrial proceeding, all protected testimony, without prejudice to their right to so designate other testimony after reviewing the transcript. Any party or non-party may, within thirty (30) days after receiving the transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as Confidential or Outside Counsel Attorneys' Eyes Only. If a party or non-party desires to protect Confidential or Outside Counsel Attorneys' Eyes Only information at trial, the issue should be addressed during the pre-trial conference.

(c) Other tangible items: the producing party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the word

1 “CONFIDENTIAL” OR “OUTSIDE COUNSEL ATTORNEYS’ EYES ONLY,” as appropriate.
2 If only a portion or portions of the information or item warrant protection, the producing party, to
3 the extent practicable, shall identify the protected portion(s).

4 (d) Certain electronic files: where it is impractical to affix the word
5 “CONFIDENTIAL” or “OUTSIDE COUNSEL ATTORNEY’S EYES ONLY,” as appropriate, to
6 each page that contains confidential material or Outside Counsel Attorney’s Eyes Only material,
7 as described in § 5.2(a)–(c) above, such as for files produced in a native format, the designating
8 party may either:

9 (i) Modify the file names of certain electronic files by adding the words
10 “CONFIDENTIAL” or “OUTSIDE COUNSEL ATTORNEYS’ EYES ONLY”; or

11 (ii) Submit, reasonably soon before or after production of certain electronic files, a
12 list of file names to be designated “CONFIDENTIAL” or “OUTSIDE COUNSEL ATTORNEYS’
13 EYES ONLY,” which shall cause the documents on the list to be constructively so marked.

14 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
15 designate qualified information or items does not, standing alone, waive the designating party’s
16 right to secure protection under this agreement for such material. Upon timely correction of a
17 designation, the receiving party must make reasonable efforts to ensure that the material is treated
18 in accordance with the provisions of this agreement.

19 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

20 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
21 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
22 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
23 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
24 challenge a confidentiality designation by electing not to mount a challenge promptly after the
25 original designation is disclosed.
26

1 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
 2 regarding Confidential or Outside Counsel Attorneys' Eyes Only designations without court
 3 involvement. Any motion regarding confidential designations or for a protective order must
 4 include a certification, in the motion or in a declaration or affidavit, that the movant has engaged
 5 in a good faith meet and confer conference with other affected parties in an effort to resolve the
 6 dispute without court action. The certification must list the date, manner, and participants to the
 7 conference. A good faith effort to confer requires a face-to-face meeting or a telephone conference.

8 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
 9 intervention, the designating party may file and serve a motion to retain confidentiality under Local
 10 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
 11 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
 12 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
 13 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain
 14 the material in question as Confidential or Outside Counsel Attorneys' Eyes Only until the court
 15 rules on the challenge.

16 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
 17 LITIGATION

18 If a party is served with a subpoena or a court order issued in other litigation that compels
 19 disclosure of any information or items designated in this action as "CONFIDENTIAL" or
 20 "OUTSIDE COUNSEL ATTORNEYS' EYES ONLY," that party must:

21 (a) promptly notify the designating party in writing and include a copy of the
 22 subpoena or court order;

23 (b) promptly notify in writing the party who caused the subpoena or order to
 24 issue in the other litigation that some or all of the material covered by the subpoena or order is
 25 subject to this agreement. Such notification shall include a copy of this agreement; and
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1 (c) cooperate with respect to all reasonable procedures sought to be pursued by
2 the designating party whose confidential material may be affected.

3 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

4 If a receiving party learns that, by inadvertence or otherwise, it has disclosed Confidential
5 or Outside Counsel Attorneys' Eyes Only material to any person or in any circumstance not
6 authorized under this agreement, the receiving party must immediately (a) notify in writing the
7 designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized
8 copies of the protected material, (c) inform the person or persons to whom unauthorized
9 disclosures were made of all the terms of this agreement, and (d) request that such person or
10 persons execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as
11 Exhibit A.

12 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
13 MATERIAL

14 When a producing party gives notice to receiving parties that certain inadvertently
15 produced material is subject to a claim of privilege or other protection, the obligations of the
16 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
17 is not intended to modify whatever procedure may be established in an e-discovery order or
18 agreement that provides for production without prior privilege review. The parties agree to the
19 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

20 10. NON TERMINATION AND RETURN OF DOCUMENTS

21 Within 60 days after the termination of this action, including all appeals, each receiving
22 party must return all Confidential or Outside Counsel Attorneys' Eyes Only material to the
23 producing party, including all copies, extracts and summaries thereof. Alternatively, the parties
24 may agree upon appropriate methods of destruction.

25 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
26 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,

1 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
2 product, even if such materials contain Confidential or Outside Counsel Attorneys' Eyes Only
3 material.

4 The confidentiality obligations imposed by this agreement shall remain in effect until a
5 designating party agrees otherwise in writing or a court orders otherwise.

6
7 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

8 DATED: September 24, 2020

/s/ Tiffany Scott Connors
Attorneys for Plaintiffs

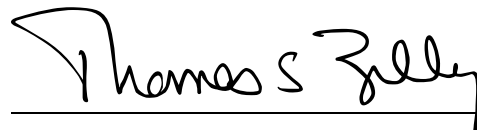
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10 DATED: September 24, 2020

/s/ Mark Walters
Attorneys for Defendant Jinrong
Automotive Accessory Development Co.
Ltd.

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12
13 PURSUANT TO STIPULATION, IT IS SO ORDERED.

14 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
15 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or
16 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
17 documents, including the attorney-client privilege, attorney work-product protection, or any other
18 privilege or protection recognized by law.

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20 DATED: October 6, 2020

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23 Thomas S. Zilly
24 United States District Judge
25
26

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Western District of Washington on [date] in the
case of _____ **[insert formal name of the case and the number and initials
assigned to it by the court]**. I agree to comply with and to be bound by all the terms of this
Stipulated Protective Order and I understand and acknowledge that failure to so comply could
expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will
not disclose in any manner any information or item that is subject to this Stipulated Protective
Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____